

TracFone Wireless, Inc. – Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Offer Global Resale Services of an Unaffiliated Carrier Between the U.S. and Foreign Points as an International Carrier

Filed March 31, 2003

ATTACHMENT 1 TO APPLICATION

Question 9: Does the applicant request streamlined processing pursuant to 47 C.F.R.

Section 63.12? If yes, include in Attachment 1 a statement of how the application qualifies for streamlined processing.

TracFone Wireless, Inc. (“TracFone”) requests streamlined processing of this Application pursuant to Sections 63.12(c)(1)(ii), 63.12(c)(1)(iii), and 63.12(c)(1)(iv).¹ As indicated in its response to Question 11 below, TracFone is affiliated under the Commission’s rules with foreign carriers operating in Argentina, Brazil, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Uruguay, and Venezuela, all of which are WTO Member countries. *See* Response to Question 11, Part (m), below, for further details of these affiliate relationships. In every destination market, TracFone either (1) is not affiliated with a foreign carrier; (2) is affiliated with a foreign carrier that qualifies for a presumption of non-dominance under Section 63.10(a)(3) of the Commission’s rules, 47 C.F.R. § 63.10(a)(3) (Argentina, Brazil, Colombia, Ecuador, Nicaragua, Uruguay, and Venezuela); (3) is affiliated with a foreign carrier that owns only mobile wireless facilities (Brazil, Colombia, Ecuador, and Nicaragua); or (4) is affiliated with a foreign carrier in a WTO Member country, and TracFone qualifies for a presumption of non-dominance on such route under Section 63.10(a)(4) of the Commission’s rules, 47 C.F.R. § 63.10(a)(4), because TracFone seeks only to resell the international switched

¹ 47 C.F.R. § 63.12(c)(1)(ii), (iii), (iv); *see also* 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations, Report and Order, 14 FCC Rcd 4909, ¶ 22 (1999).

telecommunications services of an unaffiliated U.S. facilities-based carrier on the route (Guatemala and Mexico).

Question 10: If applying for authority to provide switched services over private lines pursuant to Section 63.16, provide the required showing in Attachment 1.

No response required. TracFone is not seeking authority to provide switched services over private lines to any destination.

Question 11: If the applicant is a foreign carrier, or is affiliated (as defined in 47 C.F.R. Section 63.09(e)) with a foreign carrier, provide in Attachment 1 the information and certifications required by Section 63.18(i) through (m).

(i) TracFone certifies that it is not a telecommunications carrier in any foreign country. Under the Commission's rules, TracFone is affiliated with foreign carriers operating in Argentina, Brazil, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Uruguay, and Venezuela. TracFone's parent company, Sercotel, S.A. de C.V., a Mexican holding company, is wholly owned by América Móvil, S.A. de C.V. ("América Móvil"), a Mexican telecommunications holding company. América Móvil in turn controls Telecomunicaciones de Guatemala ("Telgua"), a Guatemalan telecommunications company, and Techtel LMDS Comunicaciones Interactivas, S.A. ("Techtel"), a new Argentine local and long distance competitor. América Móvil is also affiliated with the following wireless providers: ATL-Algar Telecom Leste S.A., Tess S.A., Americel S.A. and Telet S.A. (Brazil); Comunicación Celular S.A. and its subsidiary Occidente y Caribe Celular S.A., and Celcaribe S.A. (Colombia); Consorcio Ecuatoriano de Telecomunicaciones, S.A. (Ecuador); Servicios de Comunicaciones de Nicaragua, S.A.

(Nicaragua); Servicios de Comunicaciones Personales Inalámbricas, S.A. (Guatemala); and Radiomóvil Dipsa, S.A. de C.V. (Mexico). In addition, América Móvil recently announced that one of its subsidiaries has entered into an agreement with BellSouth Corporation and Verbier, a Brazilian holding company, such that América Móvil will acquire approximately a 95% interest in BSE, S.A., a Brazilian wireless company. América Móvil is affiliated with Telstar, S.A. and Genesis Telecom, C.A., new broadband wireless operators in Uruguay and Venezuela, respectively.

América Móvil is controlled by América Telecom, S.A. de C.V. (“América Telecom”), a Mexican holding company that is under common control with Carso Global Telecom, S.A. de C.V. (“CGT”), a Mexican holding company. CGT controls Teléfonos de México, S.A. de C.V. (“Telmex”), a telecommunications carrier that provides domestic telecommunications services in Mexico and international telecommunications services originating in Mexico on the U.S.-Mexico route. Under the Commission’s rules, TracFone therefore is affiliated with Telmex.

(j)(3) TracFone seeks authority to resell the international switched telecommunications services of an unaffiliated facilities-based carrier to all global points. By its signature on this Application, TracFone certifies that it seeks to provide resold international switched telecommunications services to the destination countries, specifically Argentina, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Uruguay, and Venezuela, in which it is under common control with a foreign carrier under the Commission’s rules. Pursuant to Brazilian government regulations, América Móvil does not control its Brazilian affiliates.

(k)(1) Argentina, Brazil, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Uruguay, and Venezuela are members of the WTO.

(l) Not applicable. The Commission has exempted CMRS carriers that resell international switched services, such as TracFone, from filing quarterly traffic reports required by Section 43.61(c) of the Commission's rules.²

(m) As discussed in the response to part (i), above, TracFone is affiliated with foreign carriers in Argentina, Brazil, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Uruguay, and Venezuela. TracFone notes that, although Telgua and Telmex appear on the Commission's list of carriers that are not entitled to the presumption of non-dominance established in Section 63.10(a)(3) of the Commission's rules,³ TracFone nevertheless is entitled to a presumption of non-dominance on the U.S.-Guatemala and U.S.-Mexico routes pursuant to Section 63.10(a)(4) of the Commission's rules. TracFone seeks to provide international switched services solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services.

With respect to Argentina, the Commission's rules presumptively classify TracFone as non-dominant because its affiliate, Techtel, is a new competitor that has substantially less than 50 percent market share in the Argentine international transport and local access markets.⁴ As a result, the Commission already has declined to impose dominant carrier treatment on one of TracFone's affiliates, Telmex USA, L.L.C. ("Telmex USA"), on the U.S.-Argentina route.⁵ For the same reason, the Commission should classify TracFone as non-

² 2000 Biennial Regulatory Review, Amendment of Parts 43 and 63 of the Commission's Rules, Report and Order, 17 FCC Rcd 11416, ¶ 30 (2002).

³ See Public Notice, *The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers That Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, DA 03-456 (rel. Feb. 19, 2003).

⁴ See 47 C.F.R. § 63.10(a)(3).

⁵ See File No. FCN-NEW-20000908-00051; see also *XO Communications, Inc.*, Memorandum Opinion and Order and Authorization, 17 FCC Rcd 19212, ¶ 32 (Int. Bur. 2002) (declining to impose dominant carrier

dominant on the U.S.-Argentina route with respect to the resold services that TracFone seeks authority to provide in this Application.

With respect to the remaining countries in which TracFone would be deemed affiliated with a foreign carrier under the Commission's rules, TracFone qualifies for a presumption of non-dominance because those carriers have significantly less than 50 percent market share in the international transport and local access markets on the foreign end of the route. Specifically, in Brazil, Colombia, Ecuador and Nicaragua, the affiliated carriers are wireless service providers. The Commission has determined that mobile wireless service providers lack sufficient market power to affect competition adversely in the U.S. market.⁶ In Uruguay and Venezuela, the affiliated carriers are new entrants providing broadband wireless services, and thus similarly lack sufficient market power to affect competition adversely in the U.S. market.

Question 12: Does the applicant seek authority to provide service to any destination described in paragraphs (1) through (4) of Section 63.18(j)? If yes, list those destinations in Attachment 1 as a response to question 12.

By its signature on this Application, TracFone certifies that it seeks to resell an unaffiliated carrier's international switched telecommunications services to Argentina, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Uruguay, and Venezuela, countries in which it is under common control, within the meaning of Section 63.18(j)(3) of the

safeguards on XO as a result of its affiliation with Techtel resulting from Telmex's proposed 40 percent indirect investment in XO).

⁶ *In re 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, Report and Order, 14 FCC Rcd 4909 (1999), at ¶ 29.

Commission's rules, with a foreign carrier. Pursuant to Brazilian government regulations, América Móvil does not control its Brazilian affiliates.

Question 15: In Attachment 1, respond to paragraphs (d), (e)(3) and (g) of Section 63.18.

(d) TracFone has not previously received authorization from the Commission under Section 214 of the Communications Act of 1934, as amended, to provide telecommunications services. Telmex USA, a wholly owned subsidiary of Telmex, holds authorization to provide international switched resale services from the United States to all international points.⁷

(e)(3) By this Application, TracFone requests authority pursuant to Section 63.18(e)(2) of the Commission's rules to resell the international switched services of an unaffiliated, authorized U.S. common carrier to all international points, including countries in which its affiliates provide services, namely, Argentina, Brazil, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Uruguay, and Venezuela. By its signature on this Application, TracFone certifies that it will comply with the requirements of Sections 63.21 and 63.23 of the Commission's rules, 47 C.F.R. §§ 63.21 and 63.23, with respect to the provision of all services authorized by the grant of this Application.

(g) Not applicable. TracFone does not seek facilities-based authority in this Application.

⁷ *Telmex/Sprint Communications, L.L.C. Application for Authority Under Section 214 of the Communications Act for Global Authority to Operate as an International Switched Resale Carrier Between the United States and International Points, Including Mexico*, Order, Authorization and Certificate, 12 FCC Rcd 17551 (1997). On June 30, 1999, the Commission granted consent to the transfer of control of Telmex/Sprint Communications, L.L.C. to Telmex International Ventures USA, Inc. ("Telmex International Ventures"). See *International Authorizations Granted*, 14 FCC Rcd 13107 (1999). By letter filed December 10, 1999, Telmex International Ventures advised the Commission that, pursuant to Section 63.24 of the Commission's rules, it had assigned the Section 214 authorization to its parent, Telmex International, Inc. ("Telmex International"), and that pursuant to Section 63.21(i), Telmex USA, a wholly-owned subsidiary of Telmex International, would use the authorization.